

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

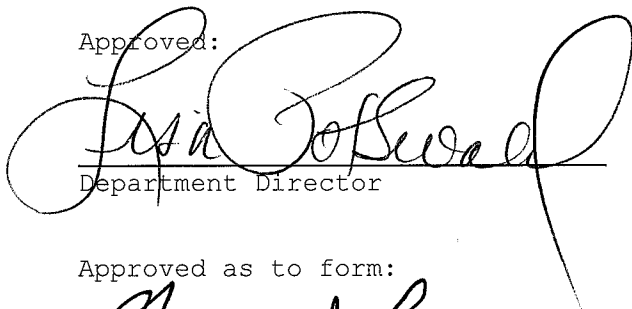
11-0569R

RESOLUTION AUTHORIZING AN AGREEMENT WITH THE JOHN
BEARGREASE SLED DOG MARATHON, INC. FOR THE USE OF CITY
PROPERTY FOR THE START OF THE SLED DOG MARATHON

CITY PROPOSAL:

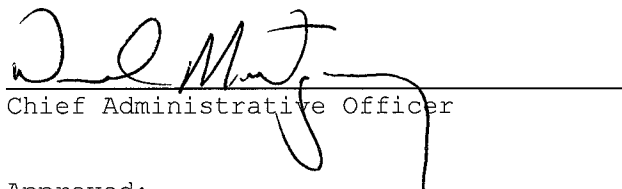
RESOLVED, that the proper city officials are hereby authorized to execute
a 3 year agreement with the John Beargrease Sled Dog Marathon, Inc. substantially
in the form of that on file in the office of the city clerk as Public Document
No. _____, for the use of the Riley road location for the start of the John
Beargrease Sled Dog Marathon.

Approved:



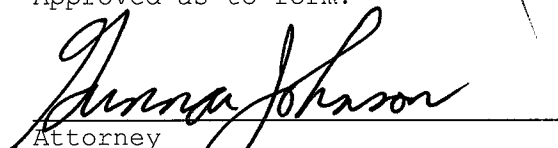
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS IP:slw 10/24/2011

STATEMENT OF PURPOSE: This resolution authorizes a 3 year agreement with the John Beargrease Sled Dog Marathon, Inc. ("Beargrease") for the use of city property known as the Riley road location for the start of the sled dog marathon. The Beargrease has utilized the Riley road location for the start of the sled dog marathon for the previous 2 years and desires to continue to use the location. The city believes it is beneficial to the city to continue to allow the Beargrease to utilize the location. The city will be identified as a sponsor of the marathon in the marathon's marketing materials.

**USE AGREEMENT
BY AND BETWEEN
JOHN BEARGREASE SLED DOG MARATHON
AND
CITY OF DULUTH**

THIS AGREEMENT, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as "City," and JOHN BEARGREASE SLED DOG MARATHON, INC. located at 218 ½ W. Superior Street, Duluth, MN 55802 a non-profit corporation under the laws of Minnesota, hereinafter referred to as "Marathon."

WHEREAS, the Marathon organizers an annual sled dog race (the "Race"); and

WHEREAS, the Race begins in Duluth and for the prior two years Marathon has utilized a City owned property near Riley Road ("Riley Road Location") as shown on the map attached to this Agreement as Exhibit A for the Race start location

WHEREAS, Marathon desires to enter into a long term agreement with City to continue to utilize Riley Road Location; and

WHEREAS, City believes the Marathon is beneficial to the City and desires to continue to allow Marathon to utilize Riley Road Location; and

WHEREAS, the parties desire to enter into an agreement to set forth the responsibilities of each party with respect to Marathon's use of Riley Road Location.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. City's Responsibilities.

A. City will provide the following:

City grants to Marathon and its employees, volunteers, participants, spectators and contractors a temporary, limited and non-exclusive license to enter in and upon the Riley Road Location as shown on the aerial photograph attached to this Agreement as Exhibit A (the "License Area") for the purpose of hosting the start of the Race (the "License"). The limited license period includes setting up and preparing for the Race, the actual Race start and the dismantling and tear down of the Race (the "License Period"). For the purpose of defining the License Period, the City acknowledges that the timing of the Race and the corresponding License Period is subject to the weather conditions but that the Race has historically been held on the last Sunday in January ("Race Day") with a back-

up date of the first Sunday in March in the event of lack of snow ("Back-up Date"). The set-up for the Race begins on the Wednesday before the Race Day and continues up to the Race Start. The Race tear-down begins after the last team has left the Race Start area. The License Period also includes a period of time in late spring after snow melt when the Marathon will return to clean-up any remaining garbage or debris.

B. City represents that (i) it has been duly authorized to execute and deliver this Agreement, and (ii) it owns the property and/or has all the necessary rights to grant the License.

II. Marathon's Responsibilities:

A. Marathon will do the following:

1. Provide City with written notice at least ten (10) days prior to the Race Day of Marathon's intent to reschedule the Race to the Back-up Date.
2. Provide the City with a copy of the Marathon's insurance certificate showing proper insurance requirements as outlined below in Paragraph 6. The Certificate must be received by the City at least thirty (30) days prior to the first set-up day.
3. Provide all plowing and/or other Race set-up activities. It is understood that a request for assistance may be made to City to help with certain set-up or take down activities, including plowing but the City shall be under no obligation to provide such services.
4. Arrange for an adequate number of trash containers, portable toilets, and for proper servicing and removal after completion of Race activities.
5. Set-up appropriate barriers to keep the general public out of restricted areas including the area around the new tool house located due east of the Race area. See attached Exhibit A.
6. Return the site to substantially the same condition as found with any site damage to be repaired by Marathon at its cost and expense to the satisfaction of City
7. Identify City as a sponsor of the Race by including the City's logo + hyperlink (where applicable) on all collateral associated with the Race including the Race website, signage, brochures.

B. Marathon represents that (i) is fully authorized to enter into and fully able to perform under this Agreement and Marathon is not subject to any conflicting obligations that will prevent Marathon from fulfilling the obligations detailed in

this Agreement, (ii) it understands and acknowledges that the License is conditioned on Marathon's compliance of its obligations outlined herein and (iii) it acknowledges and agrees that all Race activities on City property must be confined to the License Area.

IV. General Terms and Conditions.

1. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Marathon only upon being reduced to writing and signed by a duly authorized representative of each party.
2. Assignment. Marathon will not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.
3. Agreement Period and Termination. The term of this Agreement shall commence on the later of the date of the last required signature below (the "Effective Date") and performance shall be completed by May 1, 2014, unless terminated earlier as provided for herein.

Either party shall have the right to terminate this Agreement if the other party breaches this Agreement and fails to cure such breach to the reasonable satisfaction of the non-breaching party, within five (5) business days from the date the non-breaching party provides the breaching party with written notice of such breach. Notwithstanding the foregoing, this Agreement may be terminated by either party without cause, at any time during the term of the Agreement, upon written notice, given at least sixty (60) days prior to the date of the intended termination.

4. Independent Contractor.
 - a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Marathon as an agent, representative or employee of the City for any purpose or in any manner whatsoever.
 - b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
 - c. Marathon expressly waives any right to claim any immunity provided for

in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

5. Indemnity.

Marathon shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Marathon a) breach of this Agreement or b) any claims arising or resulting from Marathon's use of the Riley Road Location or License. This Section shall survive the termination of this Agreement.

6. Insurance.

- a. Marathon shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.

Public Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

- (3) **City of Duluth shall be named as Additional Insured** under the Public Liability and Excess/Umbrella Liability* or as an alternate, Marathon may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Marathon to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy

or coverages ineffective as against the City.

- (5) **The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**

- b. The insurance required herein shall be maintained in full force and effect during each Race held during the Term of this Agreement, including the Race set-up and tear down. and shall protect Marathon, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Marathon, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

7. Laws, Rules and Regulations.

Marathon agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

8. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

9. Notice

Notice to City or Marathon provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

To City of Duluth: City of Duluth
 Room 402 City Hall
 411 West First Street
 Duluth, MN 55802

To MARATHON: John Beargrease Sled Dog Marathon, Inc.
218 ½ W. Superior Street
Duluth, MN 55802

10. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

11. Waiver

The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party will not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

12. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

13. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of page left intentionally blank, signature page to follow]

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH-

**JOHN BEARGREASE SLED DOG
MARATHON, INC.**

By

Mayor

By

Its Board President

Attest:

Date:

City Clerk

Date: _____

Countersigned:

City Auditor

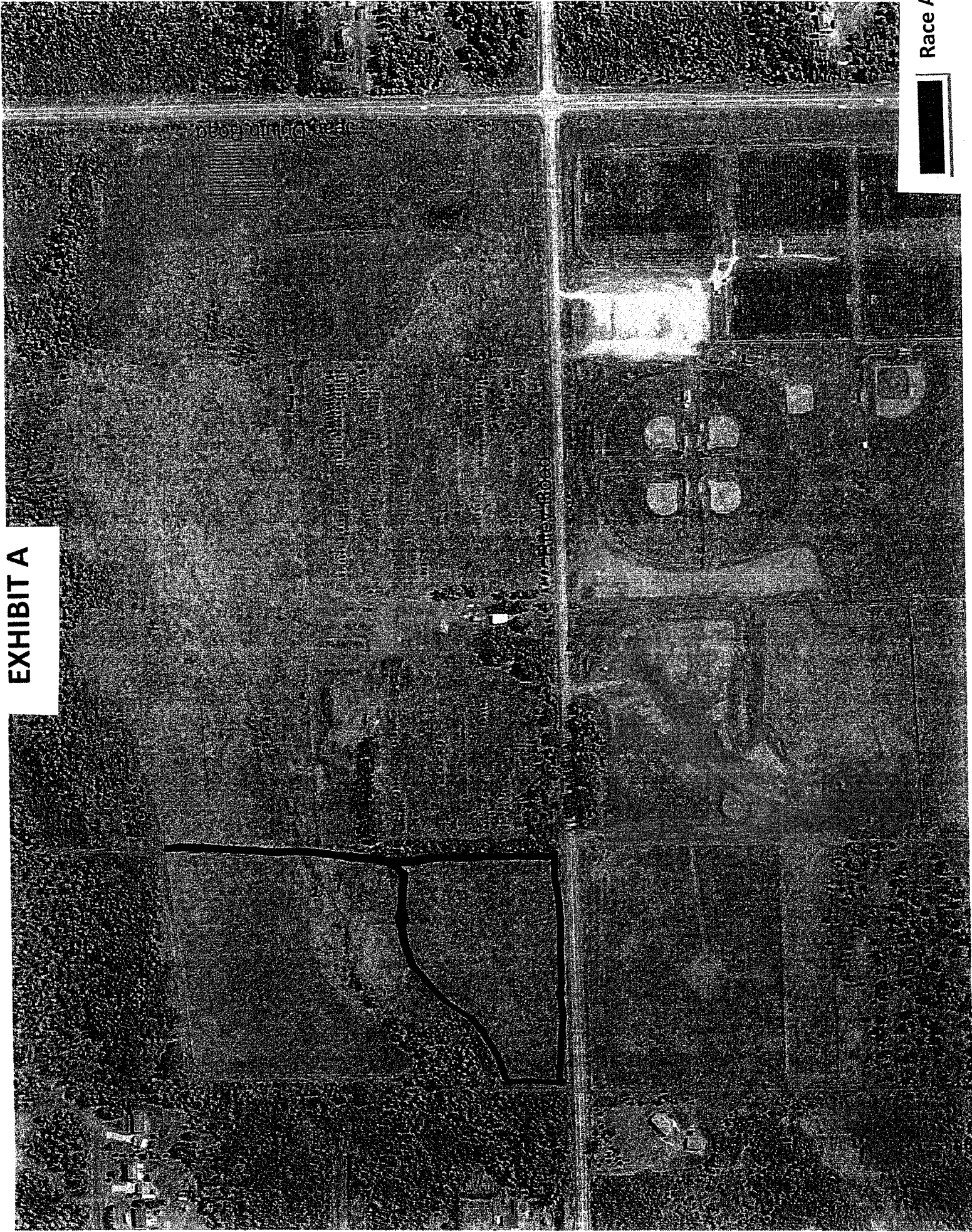
As to form:

City Attorney

EXHIBIT A

Map of Race start location

EXHIBIT A



Race Area